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82-582

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BOB ASHMORE, T. M. SHEFFIELD, BRUCE LEE, BOBBY O. BLEVINS, HERMAN DANIELS, FLOYD GRAY and JIM FERRIS, *Petitioners*

vs.

TARRANT COUNTY and COMMISSIONERS' COURT OF TARRANT COUNTY, TEXAS
MIKE MONCRIEF, County Judge
R. T. "DICK" ANDERSEN, County Commissioner
R. L. "JERRY" MEBUS, County Commissioner
A. LYN GREGORY, County Commissioner
B. D. GRIFFIN, County Commissioner
Respondents

Petition for Writ of Certiorari to the Supreme Court of the State of Texas

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QUESTION RAISED

The Supreme Court of Texas erred in holding that the Petitioners did not have a property right protected by due process in the offices to which they were elected which was constitutionally protected under the Constitution of the State of Texas, Article I, Section 17, and the Fifth Amendment to the United States Constitution by way of the Fourteenth Amendment.

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No. _____

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OCTOBER TERM, 1982

BOB ASHMORE, T. M SHEFFIELD, BRUCE LEE, BOBBY O. BLEVINS, HERMAN DANIELS, FLOYD GRAY and JIM FERRIS, *Petitioners*

vs.

TARRANT COUNTY AND COMMISSIONERS' COURT OF TARRANT COUNTY, TEXAS, MIKE MONCRIEF, County Judge, R. T. "DICK" ANDERSEN, County Commissioner, R. L. "JERRY" MEBUS, County Commissioner, A. LYN GREGORY, County Commissioner, B. D. GRIFFIN, County Commissioner, *Respondents*

Petition for a Writ of Certiorari to the Supreme Court of the State of Texas

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Bob Ashmore, T. M. Sheffield, Bruce Lee, Bobby O. Blevins, Herman Da[illegible]ls, Floyd Gray, Jim Ferris, the Petitioners herein, pray that a writ of certiorari issue to review the opinions of the Supreme Court of Texas entered in the above-entitled case on the 23rd day of June, 1982, and the Motion for Rehearing which was overruled on the 21st day of July, 1982.

OPINIONS BELOW

The opinion of the Supreme Court of Texas is reported at 635 SW2d 417, and is printed in Appendix C hereto, infra pages A-23 - A-35. The opinion of the Court of Civil Appeals of the State of Texas is reported at 624 SW2d 740, and is printed in Appendix B, pages A-14 - A-22. The judgment of the trial court is unreported. A copy of the trial court Judgment may be found in Appendix A, pages A-1 - A-13.

JURISDICTION

The opinion of the Supreme Court of Texas (Appendix C, infra pages A-23 - A-35) ws entered on the 23rd day of June, 1982. A timely motion for rehearing was denied on the 21st day of July, 1982. The jurisdiction of the Supreme Court is invoked under 28 USCS 1257(3).

QUESTION PRESENTED

Whether the County Commissioners' Court of Tarrant County, Texas could abolish the offices of the duly elected Justices of the Peace and Constables of said county without paying said officials the pay and benefits they would have received for their terms of office.

CONSTITUTIONAL PROVISIONS PRESENTED

This case involves the Fifth Amendment and the Fourteenth Amendment to the Constitution of the United States and in particular the following provisions:

Amendment 5

". . . nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

Amendment 14

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE NATURE OF THE CASE

This is an action for damages and declaratory relief brought by persons who held the offices of Justice of the Peace or Constable in the Justice Precincts of Tarrant County, Texas, as the same existed prior to January 1, 1981. Named as Respondents were the Commissioners' Court of Tarrant County, the individual members of the Court and the County itself. Petitioners sought damages for loss of the salary and emoluments of their offices which were abolished by the Commissioners' Court.

The Petitioners filed their action in the trial court asserting that the actions of the Respondents were unconstitutional. The trial court held that each petitioner had a property right in his office and could not be deprived of that right without due process of law and just compensation.

The judgment of the trial court was affirmed in Cause No. 18555, in the Court of Appeals for the Second Supreme Judicial District of Texas. The Supreme Court of Texas reversed the lower court's decision holding that the petitioners did not have a property right in their elected offices, and then stated that the petitioners did have some financial interest or "property interest" that should be protected by a Court of Equity against interference with his possession and conduct of his office dur-

ing his incumbency therein. The Supreme Court then stated procedural due process had been given to the Petitioners, and the Supreme Court held that a "trial-type" adjudication of relevant facts was not necessary for due process in the case.

REASONS FOR GRANTING THE WRIT
ISSUE ONE

The Supreme Court of Texas erred in holding that the Petitioners did not have a property right protected by due process in the offices to which they were elected which was constitutionally protected under the Constitution of the State of Texas, Article I, Section 17, and the Fifth Amendment to the United States Constitution by way of the Fourteenth Amendment.

ARGUMENT AND AUTHORITIES

The Justice of the Peace Court is a constitutional court created by Article V, Section 1 of the Constitution of the State of Texas.

The following cases have held that an elected official holds a property right in his office: *Bastrop County v. Hearn*, 70 Tex. 563, 8 SW 302; *Flaton v. State*, 56 Tex. 93; *Honey v. Graham*, 39 Tex. 1; *Castleman v. Williams*, (Civ. App.) 263 SW 638, on former appeal 112 Tex. 193, 247 SW 263; *State v. Rigsby*, 17 Civ. App. 171, 43 SW 1101; *Grayson County v. May*, 4 Will. Civ. Cas. App. Section 310 19 SW 331; *State v. Owens* 63 Tex. 261, on subsequent appeal 64 Tex. 500; and *McGuire v. Hughes* (CA) 452 SW2d 29.

The Supreme Court of Texas in its decision in this case stated "we acknowledge that an officer's interest in his elected position, though not 'property' in the conven-

tional, is a recognizable interest for purposes of procedural due process analysis."

Due process of law under the Fourteenth Amendment to the United States Constitution requires an opportunity to be heard at a meaningful time and in a meaningful manner. *Barry v. Barchi* (1979 U.S.) 61 L Ed 2d 365, 99 S. Ct. 2642. The fundamental procedural due process right to a hearing is generally found to embrace the right to present evidence and to confront and cross-examine adverse witnesses. *Morgan v. United States* 304 U.S. 1, 18; and *Green v. McElroy*, 360 U.S. 474, 497 (1959). The right to be heard also means the right to be heard by an impartial decision maker. *Arnett v. Kennedy*, 416 U.S. 134, 197 (1974). *Tunney v. Ohio*, 237 U.S. 510 (1927); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973).

CONCLUSION

Wherefore, Petitioners respectfully pray that a writ of certiorari issue from this Honorable Court to review the judgment of the Supreme Court of Texas in Cause No. C-985, Tarrant County, et al. v. Bob Ashmore, et al. In the event that the Petition is granted, Petitioners pray that the judgment of the Court below be reversed, and for such other relief as the Court may deem necessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jim Claunch, hereby certify that three true and correct copies of the foregoing Petition for Writ of Certiorari To the Supreme Court of the State of Texas were mailed to the attorney of record for Respondents, Mr. Frederick M. Schattman, Assistant District Attorney, at 200 West Belknap Street, Fort Worth, Texas 76102, by certified mail, return receipt requested, this the 30 day of September, 1982.

Jim Claunch

JIM CLAUNCH